In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1100

ELIZABETH M. BRADY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STRATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In these suits for refund of federal income taxes for 1962, 1963 and 1964, petitioner complains that $23.08 of the sum claimed for refund was improperly collected because she was afforded no post-seizure hearing after the Internal Revenue Service collected that amount by levy upon her bank account pursuant to Section 6331(a) of the Internal Revenue Code of 1954.

In amended income tax returns for the years in question, petitioner claimed a deduction for a loss said to have arisen when, because of the action of state and local officials, she was unable to realize rental income from part of her property (Pet. 6). It is well established that failure to realize income does not produce a deductible loss. *Hort* v. *Commissioner*, 313 U.S. 28. Accordingly, the district court dismissed petitioner's suit for refund for failure to state a claim upon which

relief could be granted, and the court of appeals affirmed. Petitioner does not now claim that this substantive decision was erroneous.

The deficiency arising from the disallowance of petitioner's claimed loss was collected, to the extent of $23.08, by levy upon petitioner's bank account pursuant to Section 6331(a). In her petition, petitioner now asserts that that was improper because she was afforded no post-seizure hearing (Pet. 8-9). However, this refund suit has afforded petitioner the very post-seizure hearing of which she claims she has been deprived. *Graham* v. *duPont*, 262 U.S. 234. See *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272, 281-285. The seizure by levy therefore fully complied with the requirements of due process. *Phillips* v. *Commissioner*, 283 U.S. 589.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

APRIL 1975.

DOJ-1975-04